

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 18, 2008 Session

TIM O'NEILL v. JACK PARKS

**Appeal from the Law Court of Johnson City
No. 26111 Thomas J. Seeley, Jr., Judge**

No. E2007-01505-COA-R3-CV - FILED SEPTEMBER 29, 2008

This is an appeal of the trial court's judgment dismissing the appeal of Jack Parks ("Tenant") from a general sessions court judgment of eviction. At the hearing in the trial court, Tim O'Neill ("Landlord") failed to appear. Tenant represented to the court that he had vacated the premises, which were then in the possession of the Landlord; as a consequence, the trial court dismissed Tenant's appeal and taxed him with the costs. Tenant now appeals to this court raising the sole issue of whether the trial court abused its discretion in taxing the costs against him. The applicable statute, Tenn. Code Ann. § 20-12-111 (1994), governs the taxing of costs of appeals from general sessions court. The trial court's decision is consistent with that statute. We find no abuse of discretion. Accordingly, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Law Court
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Benjamin Barton, Knoxville, Tennessee, for the appellant, Jack Parks

Francis L. Lloyd, Jr., Knoxville, Tennessee, for the appellee, Tim O'Neill

OPINION

I.

Landlord brought an unlawful detainer action against Tenant in general sessions court. Landlord prevailed, obtaining a judgment of eviction. The court held as follows:

Judgment is granted to Plaintiff(s) against Defendant(s) Possession in the amount of \$575.00 and all costs and taxes, and for possession of the described property for which a writ of possession shall be issued on Plaintiff's request. This judgment is based on trial in court.

* * *

Any unused damage [deposit] will be applied to judgment – any party can return to court to contest the use of damage deposit or additional damages.

Tenant appealed to the trial court. On the day of the hearing, Tenant appeared and represented to the court that he had vacated the premises and that Landlord was in possession of the property. The court entered the following Order:

This cause came before the Court this 8th day of June, 2007, at which time the Court made the following ORDER:

Mr. O'Neill did not appear. Mr. Parks did appear. Mr. Parks stated he had vacated the premises which were now back in the possession of Mr. O'Neill. The case is dismissed with all other relief denied.

Costs are taxed to Mr. Parks.

(Emphasis added.) Tenant received a statement from the court taxing him with \$314 in costs. Tenant, who was proceeding *pro se*, filed a "Motion to Alter," asking to be relieved of the taxed costs. He also filed a notice of appeal to this court.

Three months later, the trial court entered a written order, denying the "Motion to Alter." Upon receipt of the order, Tenant mailed the trial court a document entitled, "Motion on Motion to Alter and Opposition to Motion to Alter Hereby Denied." Treating the letter as a motion to reconsider, the trial court once again denied the motion in a written order.

II.

The sole issue on appeal is whether the trial court abused its discretion by taxing costs against Tenant.

III.

Relying on *State ex rel. Wilson v. Bush*, 141 Tenn. 229, 208 S.W. 607 (Tenn. 1918), and other cases with language that seemingly limits appeals on the sole issue of costs, Landlord suggests

that this court does not have jurisdiction to entertain this action. We read *State ex. rel. Wilson v. Bush* more broadly, however.

In *Bush*, the plaintiff relators sought to oust the defendant Bush from the office of sheriff of Hamilton County. Bush failed to win reelection, and his term expired while the ouster lawsuit was on appeal. The Supreme Court dismissed the case and rejected the relators' argument that because the costs issue remained open the case could continue. The Supreme Court stated that "an appeal will not be entertained merely to dispose of a matter of costs, even in cases where the successful party is absolutely entitled to costs." *Id.*, 141 Tenn. at 234, 208 S.W. at 609. If that was all the High Court had said, Landlord might be correct that courts will not exercise jurisdiction over appeals relating only to costs. But, as Landlord himself notes, the Supreme Court went on to say that "since the taxation of costs is discretionary now with the lower courts in all cases, we could not review their action nor entertain an appeal for that purpose alone *except under very extraordinary circumstances*."¹ *Id.*, 141 Tenn. at 235, 208 S.W. at 609. (Emphasis added.) Accord *Rogers v. Russell*, 733 S.W.2d 79, 88 (Tenn. Ct. App. 1987) (determination of costs in trial court's discretion to be reviewed on appeal "only under very extraordinary circumstances"); *Ogle v. Trotter*, 495 S.W.2d 558, 566 (Tenn. Ct. App. 1973), *cert. denied, id.* (Tenn. 1973) ("The trial court is vested with much discretion in the taxation of costs and that discretion will not be disturbed in the absence of showing abuse thereof.").

Some decades after the decision in the *Bush* case, the Supreme Court cited *Bush* approvingly in *Lewis v. Bowers*, 216 Tenn. 414, 392 S.W.2d 819 (Tenn. 1965), stating:

[S]ince costs of court are a discretionary matter for the court that tries the case to determine and *reviewable here only for manifest abuse*, it follows that we are not in a position in this case to consider the matter, there being no manifest abuse of discretion below.

Id. at 423, 392 S.W.2d at 823 (emphasis added.)

Tenant argues that this court applies a "three-pronged" test to review "discretionary decisions." Tenant cites a number of cases for this proposition. After a review of the cases, however, we agree with Landlord that the cited cases are inapposite as most deal with situations involving child custody, child visitation or child support or are distinguishable on other grounds.

The parties agree that the applicable standard of review is abuse of discretion. We find that in this case the decision of the trial court will be upheld unless there was manifest abuse or the case involves an important principle of law or extraordinary circumstances.

¹The *Bush* court also said, "Since the matter of costs in the lower courts is discretionary, we feel that we cannot entertain an appeal merely to review the question of the taxation of costs, *unless the lower court has greatly abused its discretion, or unless some important principle of law is involved*." *Id.* at 237, 208 S.W. at 610. (Emphasis added.)

IV.

The right to costs is not a common law right, but depends wholly upon statute. *Person v. Fletcher*, 582 S.W.2d 765, 767 (Tenn. Ct. App. 1979). Although the parties make detailed arguments concerning various costs statutes, this case is clearly controlled by Tenn. Code Ann. § 20-12-111, which provides:

If the appeal of the defendant from a judgment of a court of general sessions is dismissed for any cause, the original plaintiff is the successful party, and so of other cases.

Tenn. Code Ann. § 20-12-111 (1994). Tenant was the defendant in the general sessions court. He appealed, and his case was dismissed. The language of the statute is plain and unambiguous. The statute is applicable if the case is dismissed “for any cause.” Thus, under Tenn. Code Ann. § 20-12-111, the reason for the dismissal is not pertinent. The appeal of the defendant was dismissed; thus, the original plaintiff in general sessions court—Landlord—is the successful party.

Tenant argues that the applicable statute is Tenn. Code Ann. §20-12-110, which states that the defendant is the successful party “[i]n cases of nonsuit, dismissal, abatement by death of the plaintiff or discontinuance, . . .” Tenant asserts that he is the defendant and the case was dismissed; hence, according to him, the statute makes him the successful party. We disagree.

Tenn. Code Ann. § 20-12-111 is part of a carefully constructed statutory scheme. Sections concerning costs are found at Tenn. Code Ann. § 20-12-101 through Tenn. Code Ann. § 20-12-144. This set of statutes contains express provisions to cover several different circumstances in which costs might be assessed. *See, e.g.*, Tenn. Code Ann. § 20-12-110² (dismissal, abatement or discontinuance); Tenn. Code Ann. § 20-12-111 (appeals from general sessions court); Tenn. Code Ann. § 20-12-112 (cases of jurisdictional defects or irregular transfer); Tenn. Code Ann. § 20-12-113 (cases of abatement); Tenn. Code Ann. § 20-12-114 (cases in which nominal damages are recovered); Tenn. Code Ann. § 20-12-115 (actions for overflow of water); Tenn. Code Ann. § 20-12-116 (cases of usury); and Tenn. Code Ann. § 20-12-117 (cases where costs are to be taxed between or among defendants). Following this series of express provisions, the legislature enacted a catch-all provision, Tenn. Code Ann. § 20-12-118, which applies to situations not covered in the preceding express provisions.

Since there is a specific statute covering appeals from general sessions courts, *i.e.*, Tenn. Code Ann. § 20-12-111, and this case involves an appeal from a general sessions court, the case is controlled by the express provision of the specific statute. Under the rules of statutory construction, statutes are construed to avoid conflict and specific provisions control over general ones. *State v. Davis*, 173 S.W.3d 411, 415 (Tenn. 2005) (“When two statutes seemingly address the matter in question, and one is special and particular and the other is general, then the general statute will be

²This statute and all of the ones that follow in this paragraph are found in the 1994 bound volume.

construed so as to operate on all the subjects introduced therein except the particular one which is the subject of the special provision.”). Since Tenn. Code Ann. § 20-12-111 is a specific statute covering appeals from general sessions courts and this case involves an appeal from general sessions court, the case is controlled by the express provision of the specific statute. Under this provision, Landlord, the original plaintiff in sessions court, is the successful party in the case before us.

Under Tenn. Code Ann. § 20-12-101 (1994), “[t]he successful party in all civil actions is entitled to full costs, unless otherwise directed by law, or by a court of record, for which judgment shall be rendered.” Tenn. Code Ann. § 20-12-101. See *Woolfolk v. Woolfolk*, 167 Tenn. 362, 69 S.W.2d 1089 (Tenn. 1934). Since Landlord was the successful party, he was entitled to costs.

Given that there is a specific statute governing awarding costs in cases that are appealed from general sessions courts and the trial court’s decision was consistent with that statute, we find no abuse of discretion. No extraordinary circumstances have been argued in this case and we know of none that apply. Nor do we find that this case involves an important principle of law. It simply involves the routine taxing of costs.

V.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant Jack Parks. This case is remanded to the trial court for enforcement of its judgment and for collection of the costs assessed below, all pursuant to applicable law.

CHARLES D. SUSANO, JR., JUDGE